IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 136 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA
And
HON'BLE MS.JUSTICE H.N.DEVANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SAYAJI INDUSTRIES LTD.

Versus

COMMISSIONER OF INCOME TAX

Appearance:

1. INCOME TAX REFERENCE No. 136 of 1993
MR JP SHAH for Petitioner No. 1
MR MANISH R BHATT for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date of decision: 05/05/2005

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1 The following two questions have been referred by the Income Tax Appellate Tribunal, Ahmedabad Bench, 'A' under Section 256(1) of the Income Tax Act,1961 (the Act) at the instance of the assessee :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the provisions for doubtful debts of Rs.3,83,506/- due from Shri Subhlaxmi Mills Ltd. and of Rs.3,34,184/- due from Shri Keshariya Investments Limited was not allowable as a bad debt or alternatively as a trading loss.

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the amount of Rs.3,83,506/- and Rs.3,34,184/- referred to in question No.1 was not allowable as a capital loss?"

2 The Assessment Year is 1978-79 and the relevant accounting period is Financial Year 1977-78. The Company claimed a deduction of a sum of Rs.7,17,690/- being provision for debts. The same was rejected by the Assessing Officer stating that except the names of debtors no other details are filed and no other evidence is led.

3 Being aggrieved the assessee carried the matter before CIT (Appeals) who for the reasons stated in his order dated 14th October,1998 confirmed the findings recorded by the Assessing Officer. Before CIT (Appeals) additional alternative claim was raised seeking deduction by treating the amount in question as trading loss or capital loss. Both the additional contentions were also rejected.

4 The assessee preferred Second Appeal before the Tribunal. In paragraph No.2.5 of its order dated 21st April,1992 the Tribunal has recorded as under :

"2.5.It is admitted on behalf of the assessee that the amounts in question had not been actually written off in the accounts as the

litigation was pending. However, it was stated that even then deduction was allowable as bad debt in view of the decision of the Gujarat High Court in the case of Sarangpur Cotton Manufacturing Co.Ltd. Vs. CIT, 143 ITR 166 when mere provision is made regarding bad debt. The learned D.R. has relied on the reasons given by the CIT(A)".

5 Thereafter in paragraph No.2.6 of its order Tribunal records that conditions under Section 36(2)(i) of the Act are not fulfilled and hence rejects the claim of bad debt. Similarly in paragraph Nos. 2.7 & 2.8 of its order the claim of trading loss and alternatively capital loss have also been rejected respectively.

6 Mr.J.P.Shah, learned Advocate appearing on behalf of the applicant assessee contended that the Tribunal has committed an error in law in holding that condition envisaged by Section 36(2)(i)(a) of the Act are not fulfilled. According to him the Tribunal had contradicted itself when in paragraph No.2.9 of its impugned order after recording that interest income arising out of the transactions had been offered for taxation in earlier years the Tribunal held that the said fact was wholly irrelevant for deciding the question whether the concerned loss was trading loss or not. That the said aspect had a direct bearing qua fulfillment of the requisite condition under sub-clause (a) of clause (i) of sub-section (2) of Section 36 of the Act wherein it was provided that deduction of bad debt shall not be allowed unless such debts or part thereof had been taken into account in computing income of the assessee of the previous year in which the debt had been written off or an earlier previous year. Similarly it was submitted that the finding recorded in paragraph No.2.5 of the impugned order that there was no actual write off in the account was an incorrect finding in light of the fact that neither the Assessing Officer nor the CIT (Appeals) had recorded any such finding. To the contrary, it was submitted that, the Assessing Officer had commenced his computation from the figure which was net of the profit and loss account and thereafter added back the provision for doubtful debts indicating that there was write off in the profit and loss account. He therefore, urged that the claim of the assessee was required to be allowed. In support of various submissions attention was invited to various accounts as well as notes in support of the claim which was submitted before the lower authorities and were forming part of the Paper Book filed before the Tribunal.

7 Mr.M.R.Bhatt, learned Senior Standing Counsel appearing on behalf of the respondent revenue submitted that once the Tribunal had recorded that the assessee had admitted the amount in question had not been actually written off in the account it would be end of the matter as the same would establish that condition stipulated under Section 36(2)(i)(b) of the Act was not fulfilled. In this connection he invited attention to the decision of this Court in the case of Sarangpur Cotton Manufacturing Co.Ltd. Vs. Commissioner of Income Tax, (1983) 143 ITR 166 to submit that four conditions laid down by this Court had to be fulfilled before deduction under the said provision could be granted. Mr.Bhatt also invited attention to the Misc. Application (Annexure-E) which was filed before the Tribunal by the assessee to submit that the finding recorded by the Tribunal remained uncontroverted and hence there being no infirmity in the impugned order of the Tribunal, no interference was called for.

8 Mr.Shah submitted that in the note submitted before CIT (Appeals) the assessee had categorically stated that it was compelled to write off the amount due from Shri Subhlaxmi Mills Ltd. to profit and loss account and that it was in this context reliance had been placed by the assessee on the decision of this Court in the case of Sarangpur Cotton Manufacturing Co.Ltd. (supra). He therefore urged that in the alternative the assessee may be granted an opportunity to establish that all the conditions necessary for grant of deduction under section 36(2)(i) of the Act had been fulfilled in the year under consideration and for this purpose the matter may be sent back to the Tribunal leaving the questions unanswered.

9 In the case of Sarangpur Cotton Manufacturing Co.Ltd. (supra) this High Court has after analysis of Section 36(2)(i) of the Act culled out the following four conditions :

"(i) the debt or loan should be in respect of a business which is carried on by the assessee in the relevant accounting year;

(ii) the debt should have been taken into account in computing the income of the assessee for the accounting year or for an earlier accounting year or should represent money lent in the ordinary course of his business of banking or

money-lending;

(iii) the amount of debt or loan, or part thereof which is claimed as a deduction should be established to have become bad in the accounting year; and

(iv) the amount should be written off as irrecoverable in the accounts of the assessee for that accounting year in which the claim for deduction is made for the first time".

10 Apart from the fact as to whether the amount claimed as bad debt had been written off or not the impugned order of the Tribunal, when read as a whole does not reflect, one way or the other as to whether all the four conditions stand satisfied or not. The Tribunal in paragraph No.2.6 of its order states that no part of the amount in question had been taken into account while computing the income of any earlier year and also states that the assessee was not carrying on any business of banking or money lending. Even if aforesaid finding is correct it might limit itself to condition No.2 only but whether the debt claimed was in respect of the business carried on by the assessee in the relevant accounting period or not is nowhere found in the impugned order. Similarly the Tribunal has failed to record any finding in relation to condition No.3.

11 In so far as condition No.4 is concerned as could be seen from paragraph No.2.5 of the impugned order, the Tribunal has failed to record any finding as to whether firstly the amount has been written off in the account of the assessee for the accounting year in which the claim for deduction is made and secondly, whether it is written off as being irrecoverable. This Court has held that once the relevant entries had been posted in the profit and loss account with corresponding entries in the bad debt reserve account or any other account of similar nature that would be sufficient compliance with the provision or the statutory requirement and a write off would furnish a prima facie evidence that the amount has become irrecoverable.

12 Therefore, it is not possible to state one way or the other as to whether the tests laid down by this Court

are satisfied in absence of specific and categorical finding recorded by the Tribunal on the basis of evidence before it. As laid down by the Apex Court in the case of Commissioner of Income Tax Vs. Indian Molasses Co.P.Ltd. (1970) 78 ITR 474, in case a supplementary statement of the case is called for from the Tribunal, the Tribunal will be restricted to the evidence on record and may not be entitled to take additional evidence. Hence it would be appropriate to decline to answer the reference on the ground that the Tribunal has failed to consider and decide the questions in light of the requirement of the provisions and the principles laid down by this Court in the case of Sarangpur Cotton Manufacturing Co.Ltd. (supra). It will be open to the Tribunal to adjust its decision after giving adequate and reasonable opportunity of hearing and leading evidence to the parties while disposing of the appeal under Section 260(1) of the Act.

13 In the result, the Reference is left unanswered and stands disposed of accordingly. There shall be no order as to costs.

(D.A.Mehta, J)

(H.N.Devani, J)

m.m.bhatt